

### **REMARKS**

Claims 1-29 were pending in the subject application. Applicant has previously withdrawn claims 9-29 from consideration in response to a restriction requirement set forth by the Examiner. Claim 1 has been amended, and claim 2 has been previously cancelled.

Applicant maintains that these amendments to the claims do not raise any issue of new matter, and that these claims are supported by the specification as originally filed.

### **Rejection under 35 U.S.C. 103(a)**

In the September 26, 2007 Office Action, the Examiner rejected claims 1-8 under 35 U.S.C. 103(a) as being unpatentable over Berent (U.S. Patent No. 5,774,873) in view of Friedland (U.S. Patent No. 6,449,601) in further view of Alaia (U.S. Pat. App. No. 2002/046148). The Examiner has stated that Berent allegedly discloses an interactive vehicle auction and sale system comprising:

a plurality of computer (Berent: Fig 1, "2");

a computer network enabling communication between said plurality of computers (Berent: column 4, lines 17-29);

a plurality of user interface terminals in connection with said computer network, said terminals utilized to display an amount of auction and sales information and to input a series of auction bids (Berent: Fig. 2c);

a plurality of databases and corresponding database servers for storage of an amount of vehicle statistics (Berent: Fig 1, "9" and column 4, line 66 to column 5, line 20);

an input computer in communication with said network to receive and to route said amount of auction and sales information to a plurality of database servers (Berent: column 5, lines 20-24);

a network server in communication with said plurality of user interface terminals and said plurality of database servers, through said networks, said network server utilized to control said vehicle auction and sale system, coordinate said series of auction bids and maintain communication between said plurality of user interface terminals and a plurality of servers (Berent: Fig 1, "7")

an application server in communication with said network and said user interface terminals, said applications server containing a system software program for operating said interactive vehicle auction and sale system (Berent: column 4, line 66 to column 5, line 14);

a vehicle image server in communication with said network and said user interface terminals, containing a plurality of electronic vehicle images to be accessed by said user terminals (Berent: column 10, line 19-32);

a template server in communication with said network and said user interface terminals, containing a plurality of templates to be accessed by said user interface terminals in conjunction with said system software program, an amount of data from said template server utilized as a plurality of interactive computer screens (Berent: Fig. 4b);

a plurality of mail servers in communication with said network said plurality of mailer servers utilized to receive an amount of auction and sales information from said users; said mail servers also utilized to respond to said users (Berent; column 5, lines 47-59); and

a plurality of protection mechanisms contained within said network to protect said database servers from unwanted access (Berent: column 4, lines 38-52).

The Examiner also states that Berent does not expressly disclose an interactive vehicle auction and sale system comprising a web server. However, the Examiner alleges in a similar system, that Friedland discloses a

system comprising a web server (Friedland: Fig 4). Furthermore, the Examiner allegedly states that at the time the invention was made it would have been obvious to a person of ordinary skill in the art to have modified the system of Berent to have included the teachings of Friedland, because the Internet has blossomed from a medium for simple data exchange and messaging to the fastest growing, most innovative medium for information exchange and commerce (Friedland: column 1, lines 13-34).

The Examiner further states that Berent does not expressly disclose a interactive vehicle auction and sale system comprising a video server in communication with said network and said user interface terminals, containing a plurality of video media to be accessed by said user terminals. In a similar system, Friedland disclose a video server in communication with said network and said user interface terminals, containing a plurality of video media to be accessed by said user terminals (Friedland: Column 8, lines 10-27). At the time the invention was made it would have been obvious to a person of ordinary skill in the art to have modified the system of Berent to have included the teachings of Friedland, in order to improve the timeliness, quality, quantity, and, perhaps most importantly, the types

of information that can be exchanged through the internet (Friedland: column 1, lines 35-49).

The Examiner also states that Berent does not expressly disclose a bank system connection in communication with said network to enable verification of a credit line of a vehicle purchaser. However, the Examiner alleges in a similarly system, Friedland discloses a bank system connection in communication with said network to enable verification of a credit line of vehicle purchase (Friedland: column 11, lines 20-37). Furthermore, the Examiner states that at the time the invention was made it would have been obvious for a person of ordinary skill in the art to have modified the system of Berent to have included the teachings of Friedland, because the internet has blossomed from a medium for simple data exchange and messaging the fastest growing, most innovative medium for information exchange and commerce (Friedland: column 1, lines 13-34).

The Examiner further states that Berent in view of Friedland discloses a system according to claim 1 as indicated supra, however neither Berent nor Friedland disclose the use of an auction timer.

The Examiner alleges that Alaia, in a similar system, discloses an auction timer that controls an amount of time allotted for an interactive auction and a readout of said timer displayed on a user interface (Alaia: paragraph 0040):

The Examiner further alleges that Alaia further discloses a system wherein, an auction timer controls an amount of time allotted for said interactive vehicle auction and a readout of said timer is displayed on said user interface terminals (Alaia: paragraph 0040).

The Examiner also allegedly states that Alaia further discloses a system wherein, said auction timer automatically resets upon entry of a bid value higher than a currently pending highest bid value (Alaia: paragraph 0040).

The Examiner also alleges that Alaia further discloses a system wherein, upon expiration of said auction timer, system user corresponding to said highest bid value entered in said interactive vehicle auction wins said interactive vehicle auction (Alaia: paragraph 0040).

The Examiner further alleges that Alaia further discloses a system wherein, upon expiration of said auction timer, an electronic mail transmission is sent to said system user corresponding to said highest bid value (Alaia: paragraph 0400).

The Examiner further alleges that Alaia further discloses a system wherein; said auction timer commences a count down process from a value of one minute (Alaia: paragraph 0040). The Examiner notes, the specific minute value utilized within the count down process does not structurally affect the claimed system and that said value will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d, 1381, 217 USPQ 401, 404 (Fed. Cir. 1983).

Lastly, the Examiner alleges that at the time the invention was made it would have been obvious to a person of ordinary skill in the art to have modified the system of Berent and Friedland to have included the timing feature of Alaia because many systems are biased towards the supplier offering the electronic market and as such procurement

costs can be further lowered with an unbiased electronic market that promotes competition (Alaia: paragraph 0006).

### **Response**

In response to the Examiner's rejections, applicant respectfully traverses on the ground that a prima facie case of obviousness cannot be established for the amended claims. Furthermore, applicant states that Alaia does not disclose an auction timer as the Examiner suggests, but rather discloses an extension feature, thereby rendering Alaia inapplicable as prior art.

Under MPEP §2143, to establish a prima facie case of obviousness the cited references must teach or suggest every element of the claims.

First, Alaia does not teach an auction timer for use with an online auction system that interacts with a buyer to create an express online auction. Rather, Alaia teaches a system that simply includes an extension feature, wherein the system includes a starting time and closing time for an auction to take place. For example, Alaia specifically states that if the auction closes at 10:30:00 and a bid is



submitted at 10:26:49, the bid will have no impact on the overall closing time originally set at 10:30:00 prior to the start of the auction. If the system in Alaia places the default for the extension feature at one minute before the closing time, then once a bid is submitted during this time, the extension feature will activate causing the closing time to be extended for one more minute to 10:31:00. However, if a second bid is submitted after the original bid to extend the closing time to 10:31:00 but prior to the original closing time of 10:30:00, the bid will have zero impact then if a bid is submitted within one minute of the closing time.

Thus, when bids are submitted in Alaia, the extension feature only activates when bids are submitted at certain time periods in respect to when a previous bid was submitted. Therefore, other individuals who are participating in the online auction do not have the requisite time to review and react to the latest bid, even though this is one of the stated reasons for the extension feature disclosed in Alaia. The extension feature does not activate to all bids submitted to the ongoing auction, but rather only under a specific set of predetermined time constraints, as opposed to the instant invention.

In contrast to Alaia, the instant invention merely relies on a starting time for the auction and does not provide a predetermined closing time prior to the auction. Thus, in Alaia, if the extension feature is not activated, the auction will close at the set time. The instant invention includes an auction timer that is set at a predetermined duration limit, for instance four, two or one minute and begins to countdown once the auction has commenced. Furthermore, once the auction begins in the instant invention, the auction timer is reset to the original predetermined duration period once a higher bid has been submitted. This enables all individuals participating in the auction, to be able to review the latest bid for the full allotted duration period as opposed to the extension feature in Alaia. Moreover, the auction timer of the instant invention reacts to every bid submitted during the auction as opposed to Alaia, such that the auction timer disclosed in the instant invention will be reset to the original duration period after the submission of each bid that beats the highest bid on record. Therefore, the instant invention could theoretically have a never-ending auction based on the number of submissions, whereas Alaia sets a closing time

and based on the timing of bids, would end on that closing time.

In addition, the auction system of the instant invention utilizes mandatory bid increments in combination with the auction timer, coupled with a starting value of a vehicle to create an express online and interactive auction. Furthermore, unlike Alaia, the instant invention does not post items for lengthy review, rather creating an express online auction utilizing the auction timer to post and auction vehicles in a matter of minutes. The system in Alaia is primarily concerned with staggering lots of items (Alaia, paragraph 51), thereby giving more time for individuals to think/review/submit bids for items. The instant invention allows for the posting of multiple lots within shortened time frames to create an express auction which is primarily facilitated by the auction timer, since each high bid resets the auction timer.

Moreover, Alaia indicates that the entire auction process is maintained and administered by a "coordinator" who works with both the buyer and the supplier to determine requests for quotations, preparations for the auction, along with communicating with the buyer and seller via a

network service provider. The instant invention does not include any type of "coordinator" to help with the overall auction process; rather the entire system is automated and requires no management of the actual auction.

Lastly, applicant again points out that the so-called extension or "overtime" feature in Alaia is not an auction timer as disclosed in the instant invention. Rather, in Alaia there is an extension period categorized as "overtime", and there is only another extension period if a bid is submitted within a certain time proximity to the closing, otherwise the auction ends. Conversely, the instant invention employs an auction timer that resets every second a higher bid is submitted. The auction timer of the instant invention does not "extend" as is described in Alaia, but rather resets to the original predetermined duration period.

Thus, the extension feature in Alaia cited by the Examiner does not function in the same way as the auction timer in the instant invention based on the distinctions provided above. Therefore, the reference of Alaia does not qualify as prior art to support an assertion of obviousness

since Alaia does not teach the auction timer disclosed in the instant invention.

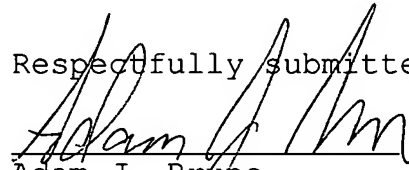
With all due respect to the Examiner, applicant points out that the reasoning for determining why it would be obvious to combine the timing feature of Alaia with the systems of Berent and Friedland relies solely on a vague generalization that is mentioned in passing in the "Background of the Invention Section". The statement "Many systems are biased towards the supplier offering the electronic market. Procurement costs can be further lowered with an unbiased electronic market that promotes competition" makes no reference to the invention disclosed in Alaia regarding the alleged "timing feature". Also, that sole reference provides no insight into the belief that there would be some motivation or suggestion to combine the cited references at the time of filing the instant application.

In view of the applicant's remarks and amendments to the claims, applicant respectfully requests the Examiner to remove this ground of rejection.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorney invites the Examiner to contact them at the number provided below.

No fee is deemed necessary in connection with the filing of this Amendment. If any additional fee is required, authorization is hereby given to charge the amount of any such fee to the Deposit Account 12-0115.

Respectfully submitted,



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